

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

GARY A. ROUSH	:	APPEAL NO. C-160458
	:	TRIAL NO. A-1401224
and	:	
	:	<i>JUDGMENT ENTRY.</i>
MELISSA ROUSH	:	
	:	
Plaintiffs-Appellants,	:	
	:	
vs.	:	
	:	
MICHAEL SILBERSTEIN	:	
	:	
and	:	
	:	
CITY OF CINCINNATI,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* R.Rep.Op. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Cincinnati police officer Michael Silberstein and Miami Township police officer Gary Roush were involved in a motorcycle accident while both on duty. Roush and his wife sued Silberstein and the city of Cincinnati, arguing that Silberstein had been negligently operating his motorcycle at the time of the accident. Silberstein and the city filed counterclaims against Roush, arguing that he was negligently operating his motorcycle. Following the completion of discovery, Silberstein and the city moved for summary judgment, maintaining that they were immune from liability under R.C. Chapter 2744. The trial court agreed. The

Roushes now appeal, arguing in a single assignment of error that the trial court erred by granting summary judgment in favor of Silberstein and the city. Because Silberstein was on an “emergency call” at the time of the accident, we affirm the trial court’s judgment.

This court reviews the granting of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) the evidence, when viewed in favor of the nonmoving party, permits only one reasonable conclusion and that conclusion is adverse to the nonmoving party. Civ.R. 56(C); *Grafton*; *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 639 N.E.2d 1189 (1994).

In their brief, the Roushes do not contest the trial court’s grant of summary judgment with respect to Silberstein, so we will not address that issue. *See* App.R. 12(A)(2) and 16. With respect to the city’s immunity, we note that under R.C. 2744.02(B)(1), a city is generally liable in damages in a civil action for injury to a person or property caused by the negligent operation of any motor vehicle by its employees when the employees are engaged within the scope of their employment and authority. But there are exceptions to this liability. Under R.C. 2744.02(B)(1)(a), a city is immune from liability if the police officer was operating his motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful and wanton misconduct.

Because the Roushes do not contend that Silberstein was operating his motorcycle in a willful and wanton manner, we limit our review to whether Silberstein was responding to an emergency call at the time of the accident.

R.C. 2744.01(A) defines “emergency call” as a “call to duty, including, but not limited to communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.”

In *Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003-Ohio-3319, 790 N.E.2d 781, the Ohio Supreme Court defined “duty” to mean “obligatory tasks, conduct, service, or functions enjoined by order or usage according to rank, occupation, or profession.” *Id.* at ¶ 13, citing *Webster’s Third New International Dictionary* 705 (1986) 705. Thus, the Supreme Court did not limit a “call to duty” to “inherently dangerous situations.” *Colbert* at ¶ 14. Instead, it adopted a broad interpretation of a “call to duty” and stated that it included situations “to which a response by a peace officer is required by the officer’s professional obligation.” *Id.* at ¶ 15. The Supreme Court found in *Colbert* that the police officers were responding to an emergency call when they followed a vehicle they had observed in a potential drug transaction, stating that “[t]he need to investigate this possible criminal act was a call to duty.” *Id.* at ¶ 16.

Since *Colbert*, courts have interpreted “emergency call” broadly. See *Gilbert v. Cleveland*, 8th Dist. Cuyahoga No. 99699, 2013-Ohio-5317, ¶ 10 (pacing a car to determine its speed is a call to duty); *Rambus v. Toledo*, 6th Dist. Lucas No. L-07-1378, 2008-Ohio-4283, ¶ 17 (transferring a prisoner between prisons is a call to duty); *Martin v. Ironton*, 4th Dist. Lawrence No. 07CA37, 2008-Ohio-2842, ¶ 17 (assisting another officer in finding an address for a citizen is a call to duty).

Here, after the reviewing the record, we hold that Silberstein was engaged in a call to duty at the time of the motorcycle accident, which occurred at the intersection of Sixth and Race Streets. The unrefuted facts demonstrate that Roush and

Silberstein, as well as other officers, has been tasked with escorting busloads of dignitaries from Cincinnati's District One police headquarters to Fountain Square in downtown Cincinnati for the annual police memorial parade. After completing that task, Silberstein testified that he had noticed an empty bus behind him when he was returning to police headquarters. Although not required to provide an escort for returning buses, Silberstein testified that as he approached the intersection of Race and Sixth streets, he was "trying to assess the situation." However, he did not have time to determine whether he should block the intersection for the returning bus because as he turned to look for it, his and Roush's motorcycles collided. At the time of the accident, Silberstein's lights were activated.

Silberstein was not engaged in his assigned task for that day but instead was in the process of assessing whether another vehicle needed assistance when the accident occurred. Because Silberstein had a professional obligation to respond to a public safety issue, we find that he was engaged in a call to duty at the time of the accident. Accordingly, the exception to liability under R.C. 2744.02(B)(1)(a) applies, and the city is immune from liability.

We overrule the single assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**MOCK, P.J., CUNNINGHAM and ZAYAS, JJ.**

To the clerk:

Enter upon the journal of the court on April 7, 2017  
per order of the court \_\_\_\_\_.  
Presiding Judge